IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No.283 of 2001 with FAO Nos.180, 181, 195, 226, 227, 232 of 2004 and 260 of 2005.

Reserved on: 28.06.2007.

Decided on: *August 02, 2007*

For title, please see over-leaf.

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellants: }
}
For the Respondents: }

Please, see over-leaf.

Kuldip Singh, Judge

This judgment shall dispose of FAO No.283 of 2001 with FAO Nos.180, 181, 195, 226, 227, 232 of 2004 and 260 of 2005 which have arisen out of MAC Petitions No.75/1997, 55/98, 72/98, 16/99, 41/99, 56/98, 54/98 and 71/98 respectively decided by Motor Accident Claims Tribunal, Una. All these cases have arisen out of accident involving vehicle No.HID-1825 owned by Babu Ram, which was being driven at the time of accident by Avtar Singh, driver and insured with New India Assurance Company. MAC Petition No.75 of 1997 was dismissed by Motor Accident Claims Tribunal, Una on 6.8.2001 and MAC Petitions No.55/98, 72/98, 16/99, 41/99, 56/98, 54/98 and 71/98

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment ? Yes***

were allowed by Motor Accident Claims Tribunal, Una by common award dated 13.2.2003 as follows:-

MAC Petition No.55/98	Rs.50,000/-
MAC Petition No.72/98	Rs.50,000/-
MAC Petition No.16/99	Rs.84,000/-
MAC Petition No.41/99	Rs.20,000/-
MAC Petition No.56/98	Rs.60,000/-
MAC Petition No.54/98	Rs.25,000/-
MAC Petition No.71/98	Rs.45,000/-

In FAO No.283 of 2001, petitioner has come in appeal against dismissal of his petition. In FAO Nos.180, 181, 195, 226, 227, 232 of 2004 and 260 of 2005 insurer has come in appeal against the liability fixed by the tribunal on the insurer. The parties are referred in the same manner as before the tribunal.

2. The brief facts in FAO No.283 of 2001 are that petitioner Hazara Singh was going on cycle from Thathal to Nandpur on 10.5.1997, vehicle bearing registration No.HID-1825, which was being driven rashly and negligently by Avtar Singh, came from Nandpur side and knocked down the petitioner. He fell down on the road and suffered grievous injuries in the accident. He was admitted in Civil Hospital, Una then referred to CMC Ludhiana and was still under treatment when he filed the petition. The legs, arms and ribs of the petitioner were fractured, an F.I.R. was registered under Sections 279, 337, 304-A I.P.C. at Police Station, Amb. The petitioner was 46 years of age and was earning Rs.7000/- per month salary. He claimed

Rs.19,48,800/- compensation along with interest at the rate of 18% per annum from the date of accident till realization.

3. Avtar Singh, driver filed reply and has submitted that on the relevant date and time he was driving the vehicle in question at very slow speed. He has alleged that at village Thathal, the tie rod of the vehicle all of a sudden got free due to mechanical defect and the vehicle went out of control which caused the accident and even he (driver) received injuries in the accident. The petitioner was coming from Amb side on bicycle with loose brakes and could not control the bicycle which hit the vehicle in question. The accident took place due to mistake of the petitioner himself. He prayed for dismissal of the petition.

4. Babu Ram, owner of the vehicle, filed separate reply and submitted that Avtar Singh, licenced driver, was driving the vehicle cautiously but at village Thathal tie rod of the vehicle got free suddenly and he could not control the vehicle even by applying the brakes. The vehicle struck against mango tree. He has denied that accident took place due to rash and negligent driving of the driver of vehicle No.HID-1825. The petitioner was riding bicycle having loose brakes and he could not control his bicycle and hit the vehicle in question which had already struck the mango tree. The amount claimed is excessive. He prayed for dismissal of the petition.

5. The respondent No.3 insurer filed reply and took preliminary objections of vagueness of the petition and having not

been filed on prescribed format, the insurer denied the policy, in case it is proved that the vehicle was insured with the insurer in that case also the vehicle in question was not involved in the accident. The driver was not having valid driving licence. The insurer denied the claim of the petitioner. The tribunal held that accident took place due to mechanical failure and, therefore, the petitioner is not entitled to compensation and dismissed the petition on 6.8.2001.

6. The facts in FAO Nos.180, 195, 226, 227, 232 of 2004 and FAO No.260 of 2005, in brief, are that the petitioners were travelling in vehicle No.HID-1825 on 10.5.1997 owned by Babu Ram which was being driven by Avtar Singh at the time of accident. The vehicle in question was insured with New India Assurance Company at that time. The petitioners were members of a marriage party, the vehicle met with an accident near *Nandpur Dosadka* and struck against a tree. A cyclist had come in front of the vehicle from opposite side and the vehicle driver could not control the vehicle and struck it against the tree. All the petitioners in FAOs No.180, 195, 226, 227, 232 of 2004 and FAO No.260 of 2005 sustained injuries in the accident. They were hospitalized at District Hospital, Una. Some of the petitioners had gone for better treatment at other hospitals also. The accident took place due to rash and negligent driving of the driver of the vehicle No.HID-1825. The legal representatives of Bughu Ram filed claim petition No.72/98 out of which FAO No.181 of 2004 has arisen. Another petition being MAC Petition No.46/99 was filed by another set of

legal representatives of Bughu Ram on the ground that Bughu Ram was travelling in vehicle No.HID-1825 and he died in the accident due to rash and negligent driving of the driver. The tribunal allowed all the petitions by common award dated 13.2.2003 except MAC Petition No.46 of 1999 which was dismissed for want of evidence by the same award i.e. 13.2.2003. No appeal was filed against dismissal of MAC Petition No.46 of 1999.

7. I have heard the learned counsel for the appearing parties and gone through the record.

8. The learned counsel for claimant / petitioner in FAO No.283 of 2001 has submitted that the tribunal has erred in dismissing the claim petition. The tribunal has misconstrued and misinterpreted the material on record in that case. The petitioner has proved the negligence of the driver who was driving vehicle No.HID-1825. The owner was negligent in maintaining the vehicle. The insurer of vehicle No.HID-1825 is liable to pay the compensation to the petitioner. In FAOs No.180, 181, 195, 226, 227, 232 of 2004 and FAO No.260 of 2005 the learned counsel for insurer of vehicle No.HID-1825 has submitted that the vehicle in question was goods vehicle and the petitioners in these cases were travelling in the vehicle as gratuitous passengers, therefore, insurer is not liable to pay any compensation to them. In FAO No.181 of 2004 the deceased Bughu Ram was also travelling in vehicle No.HID-1825 as gratuitous passenger, therefore, petitioners, in that case also, are not entitled to claim any compensation from the insurer.

FAO No.283/2001:

9. The petitioner Hazara Singh has appeared as PW-7 and has deposed that on 10.5.1997 he was going on his cycle to school and at place Nandpur tempo No.HID-1825 came from opposite side in high speed. On seeing the tempo in high speed, he brought his cycle on *Kacha* road but the tempo hit him on wrong side and he was thrown at distance of 20 feet. The cycle struck against a mango tree and he suffered serious injuries as a result of accident. He has stated that the accident took place due to rash and negligent driving of the tempo driver. The case was registered against driver of vehicle No.HID-1825 vide F.I.R. Ext.PA. The F.I.R. was got registered by Bal Krishan, who is none else but PW-2. He has admitted that the F.I.R. Ext.PA was lodged by him. In F.I.R. Ext.PA he has specifically got recorded that accident took place due to rash and negligent driving on the part of driver of vehicle No.HID-1825. As PW-2 he has changed his version and stated that Avtar Singh was not driving the vehicle rashly, the accident took place as steering of the vehicle got free. PW-2 has given first version in F.I.R. Ext.PA. He, for obvious reasons, changed his statement as PW-2. The fact remains that the parties have admitted the accident. The defence of the driver and owner of the vehicle is that accident took place due to sudden mechanical failure and breaking of tie rod of the vehicle. The driver of vehicle No.HID-1825 did not appear in the witness box. There is no expert report on record that accident took place due to sudden mechanical failure of

the vehicle No.HID-1825. It was for the driver and owner of the vehicle in question to prove that the accident took place due to sudden breaking of the tie rod of the vehicle. It is, thus, clear that the accident took place due to rash and negligent driving of driver Avtar Singh who was driving vehicle No.HID-1825 at the time of accident. The contrary finding of the tribunal is reversed and it is held that accident took place due to rash and negligent driving of Avtar Singh, driver of vehicle No.HID-1825.

10. The next question is regarding quantum of compensation. PW-3 Samuel Mull, Junior Accountant, CMC Hospital, Ludhiana has proved medical treatment receipts Ext.P-1 to P-49 issued by CMC Ludhiana. He has stated that Hazara Singh remained admitted in Ward No.4 in CMC, Ludhiana. PW-4 Sukhwinder Singh, Gee Diagnostic Centre, Ludhiana, has stated that CT- Scan of Hazara Singh was conducted on 10.5.1997 and he has proved receipt Ext.P-50 amounting to Rs.2000/- for carrying out the CT-Scan of Hazara Singh.

11. PW-5 Naresh Kumar has stated that he runs Pankaj Taxi Service consisting of two vehicles bearing No.HP 01-0534 and HP 02-2069. He has stated that he took Hazara Singh from Thathal to Ludhiana and other places and back for treatment and has proved taxi bills Ext.P-51 to P-58. PW-6 Dr.Anoop Kumar has stated that in the year 1998 he was doing M.S. in CMC Ludhiana. He was part of treating team of Hazara Singh in Hospital Unit No.C-241138. Hazara

Singh was admitted in CMC Ludhiana on 10.5.1997 and remained there till 8.6.1997. He was admitted second time on 30.8.1997 and was discharged on 11.9.1997. He has proved disability certificate Ext.PW-6/A of Hazara Singh which is signed by him and counter signed by Medical Superintendent of the Hospital. The petitioner is unable to do any work with left upper limb due to disability which is 95% of left upper limb.

12. PW-7 Hazara Singh has stated that in the accident he has suffered serious injuries, his right leg was broken at three places in which a rod was inserted below knee and above knee, two plates were inserted, his left arm does not work. He was treated at District Hospital, Una, CMC Ludhiana. He was admitted in CMC Ludhiana twice for about 1 ½ months and he was operated twice. He was outdoor patient at CMC Ludhiana at the time of making statement where he visited 15/16 times. He could not walk of his own. He had to take the help of some other person. He has proved vouchers Ext.P-1 to P-90 and has stated that he has spent Rs.1,25,000/- on his treatment. In addition to this, he has lost some vouchers and he has not obtained some bills of treatment. He has spent about Rs.12,000/- on the attendants who accompanied him at CMC Ludhiana. He has kept one attendant at home and was paying Rs.2000/- per month to him. He still feels pain in his body due to accident. In cross examination, he has stated that he submitted medical bills to the department for reimbursement but those were

returned to him. After the accident, when he joined the duty, he did not take any leave thereafter. The insurer has tendered in evidence policy of the vehicle Ext.RX.

13. The petitioner has suffered serious injuries in the accident and he remained under treatment for long period. He was operated twice. He remained indoor patient twice, rod and plates were inserted in his leg. He has suffered 95% permanent disability of left upper limb. He is unable to walk properly. He was not fully recovered when he made the statement before the tribunal. He remained on medical leave. The evidence led by him shows that as a result of accident he suffered serious injuries and remained under pain and suffering for long time. Many factors are to be taken into consideration while awarding compensation. The petitioner has suffered pecuniary and non pecuniary loss due to the accident. In ***R D Hattangadi Versus Pest Control (India) Pvt. Ltd. And others [(1995) 1 SCC 551,*** in Para-9 of the judgment, the Supreme Court has held as under:-

> "Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary

> damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

The compensation is to be awarded to the petitioner Hazara Singh keeping in view the injuries sustained by him in the accident and consequential pecuniary and non pecuniary loss suffered by him due to accident.

14. The petitioner has proved Ext.P-1 to Ext.P-90 vouchers of medical expenses incurred by him on his treatment for the injuries sustained by him in the accident. The petitioner has spent Rs.1,25,000/- on his treatment. He remained under treatment for long period. The petitioner was 48 years of age at the time of accident. The petitioner has stated that he submitted his medical bills to the Department for reimbursement which were returned to him. There is

no rebuttal to the evidence led by the petitioner, in fact, except for tendering policy of the vehicle the respondents have led no evidence. There is no evidence on record to show that the medical expenses incurred by petitioner were reimbursed to him. The petitioner is, thus, entitled to Rs.1,25,000/- on account of medical and transport expenses, Rs.10,000/- lump sum towards attendant expenses who must have remained with the petitioner during his indoor hospitalization and whenever he visited various hospitals in connection with his treatment, Rs.5000/- towards special diet, Rs.60,000/- for pain and suffering and Rs.20,000/- for the loss of enjoyment and amenities of life after the accident. The petitioner is, thus, in all entitled to Rs.2,20,000/- compensation along with interest @ 9% per annum from the date of filing of the petition i.e. 6.11.1997 till deposit / realization of the amount on account of injuries sustained by him in the accident. The accident has occurred due to rash and negligent driving of Avtar Singh driver of vehicle No.HID-1825 which was insured vide Ext.RX with the insurer. The New India Assurance Company has not proved the defences available to the insurer and violation of policy. Therefore, Avtar Singh, driver, Babu Ram, owner and New India Assurance Company Ltd. Insurer of vehicle No.HID-1825 are jointly and severally liable to pay compensation to petitioner Hazara Singh. The vehicle was insured, therefore, whole of the compensation amount shall be payable by New India Assurance Co. to the petitioner Hazara Singh.

FAOs No.180, 181, 195, 226, 227, 232 of 2004 and 260 of 2005:

15. The tribunal in the award dated 13.2.2003 has recorded a finding that accident took place due to rash and negligent driving of driver Avtar Singh of vehicle No.HID-1825 owned by Babu Ram and insured with New India Assurance Co. It has been held that vehicle No.HID-1825 was goods vehicle. The petitioners in FAOs No.180, 195, 226, 227, 232 of 2004 and FAO No.260 of 2005 were gratuitous passengers in vehicle No.HID-1825. In FAO No.181 of 2004 Bughu Ram was also a gratuitous passenger in vehicle No.HID-1825 at the time of accident. These findings have attained finality. The short question in these appeals is whether the Insurance Company is liable to pay compensation for the injuries sustained by gratuitous passengers in goods vehicle. This point is now no more *res intgra* in view of law laid down by the Apex Court. In ***National Insurance Co. Ltd. Versus Baljit Kaur [(2004) 2 SCC 1], National Insurance Co. Versus Bommithi Subbhayamma and Others [(2005) 12 SCC 243]*** and ***New India Assurance Co. Ltd. Versus Vedwati & Others [AIR 2007 SC 1334],*** the Supreme Court has held that gratuitous passengers carried in goods vehicle are not entitled to compensation from insurer. The tribunal has wrongly held liable insurer to pay compensation to the petitioners. Therefore, impugned award to the extent it has made liable the insurer to pay compensation is set aside. However, the driver, Avtar Singh, and owner Babu Ram are liable to pay the compensation to the claimants / petitioners.

16. The learned counsel for the claimants / petitioners has submitted that in pursuance of impugned award the Insurance Company has deposited the award amount in each appeal, therefore, the award amount along with up to date interest may be ordered to be released in favour of the claimants / petitioners with liberty to the Insurance Company to recover the said amount from the driver and owner of the vehicle. In ***Baljit Kaur's case (supra),*** the Supreme Court after exonerating the insurer directed the insurer to satisfy the award amount in favour of the claimant, if not already satisfied and recover the same from the owner of the vehicle and it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the tribunal and the issue is decided against the owner and in favour of the insurer.

17. In ***United India Insurance Company Versus Smt.Piari Devi and Others [2005 (2) Shim.LC 456],*** this Court while exonerating the liability of the Insurance Company has ordered the release of deposited amount in favour of claimants. The Insurance Company was given liberty to recover the amount deposited by it along with interest from the owner by filing appropriate execution proceedings before the Motor Accident Claims Tribunal without being required to file separate suit or proceedings.

18. The result of the above discussion is that FAO No.283 of 2001 is allowed and award dated 6.8.2001 passed in MAC Petition No.75 of 1997 by Motor Accident Claims Tribunal, Una is set aside. An award of Rs.2,20,000/- is passed in favour of the petitioner Hazara Singh and against respondents Avtar Singh, driver, Babu Ram, owner of vehicle No.HID-1825 and New India Assurance Company jointly and severally along with interest at the rate of 9% per annum from the date of filing of the petition i.e. 6.11.1997 till deposit / realization. The vehicle No.HID-1825 was insured with insurer New India Assurance Company, therefore, New India Assurance Company shall pay the entire compensation of Rs.2,20,000/- along with interest to petitioner Hazara Singh. The award of Rs.2,20,000/- includes amount of interim award, if any, awarded to Hazara Singh, petitioner under Section 140 of the Motor Vehicles Act.

FAOs No.180, 181, 195, 226, 227, 232 of 2004 and 260 of 2005 are allowed and common award dated 13.2.2003 passed by Motor Accident Claims Tribunal, Una in each appeal is modified. New India Assurance Company insurer of vehicle No.HID-1825 is exonerated. However, Avtar Singh driver and Babu Ram, owner of vehicle No.HID-1825 jointly and severally shall pay compensation as awarded by the tribunal in favour of the petitioners / claimants in their respective cases along with interest at the rate of 9% per annum from the date of filing of respective petition before tribunal till deposit / realization. The awarded amount to petitioners / claimants in these

appeals is inclusive of the amount of interim award under Section 140 of the Motor Vehicles Act, if any, awarded to petitioners / claimants.

In FAOs No.180, 181, 195, 226, 227, 232 of 2004 and 260 of 2005 New India Assurance Company has deposited the awarded amount. The petitioners / claimants in respective appeals are permitted to withdraw the amount along with up to date interest. The New India Assurance Company may recover the amount deposited by it along with interest in each appeal from Babu Ram, the owner of vehicle No.HID-1825 by filing appropriate execution proceedings before the Motor Accident Claims Tribunal without being required to file separate suit or proceedings. The present judgment shall be treated to be the decision of dispute between the insurer and the insured of vehicle No.HID-1825.

19. No other point was urged.

20. FAOs No.283 of 2001, FAOs No.180, 181, 195, 226, 227, 232 of 2004 and 260 of 2005 are disposed of in the above terms. No order as to costs.

(Kuldip Singh)
Judge.

August 02, 2007
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1. ***FAO No.283 of 2001***.

   Hazara Singh versus Avtar Singh & Ors.

   For the appellant: Mr.Ajay Sharma, Advocate.

   For respondent No.3: Mr.B.M.Chauhan, Advocate.

2. ***FAO No.180 of 2004***:

   New India Assurance Co. versus Birbal & Ors.

3. ***FAO No.181 of 2004***:

   New India Assurance Co. Versus Kamla Devi & Ors.

4. ***FAO No.195 of 2004***:

   New India Assurance Co. Versus Satanjeev & Ors.

5. ***FAO No.226 of 2004***:

   New India Assurance Co. Versus Ravi Kumar & Ors.

6. ***FAO No.227 of 2004***:

   New India Assurance Co. Versus Kamal Dev & Ors.

7. ***FAO No.232 of 2004***:

   New India Assurance Co. Versus Jyoti & Ors.

8. ***FAO No.260 of 2005***:

   New India Assurance Co. Versus Raghuvir Chand & Ors.

   For the Appellant: Mr.B.M.Chauhan, Advocate.

   For the respondents: Mr.Ajay Sharma, Advocate for respondent No.1 in all cases and in FAO No.181 of 2004 for respondents No.1 to 6.

   None for other respondents in all cases.

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